

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 26

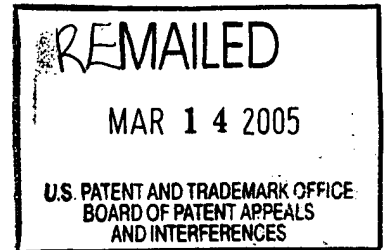
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY DEAN WALKER

Appeal No. 2004-2364
Application No. 09/883,710

ON BRIEF



Before JERRY SMITH, BARRY, and RUGGIERO, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-19, which constitute all the claims in the application.

The disclosed invention pertains to a method and apparatus for operating a communication system.

Representative claim 1 is reproduced as follows:

1. A method for operating a communication system, comprising the steps of:
 - transmitting a first information frame;
 - selectively receiving a first response to transmission of the first information frame;

Appeal No. 2004-2364
Application No. 08/883,710

measuring a first amount of time between transmission of the first information frame and receipt of the first response; and

selectively modifying a response time value in response to the first amount of time, wherein said step of measuring a first amount of time between transmission of the first information frame and receipt of the first response uses a timer operating in response to a clock, and wherein said response time value is a response time value of said timer.

The examiner relies on the following reference:

Ellis	5,719,882	Feb. 17, 1998
		(filed Apr. 28, 1992)

Claims 1-19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Ellis.

Rather than repeat the arguments of appellant or the examiner, we make reference to the briefs and the answer mailed March 31, 2004 for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of anticipation relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the briefs along with the examiner's

rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the disclosure of Ellis does fully meet the invention as set forth in claims 1, 5-7, 11 and 14-18. We reach the opposite conclusion with respect to claims 2-4, 8-10, 12, 13 and 19. Accordingly, we affirm-in-part.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner has indicated how he reads the claimed invention on the disclosure of Ellis [answer, pages 4-9]. With respect to independent claim 1, appellant argues that Ellis does not disclose measuring the first amount of time using a timer operating in response to a clock and wherein the response time value is a response time value of said timer as claimed.

Appellant argues that the counter in Ellis simply counts successful responses and is not a timer [brief, page 3]. The examiner responds that Ellis teaches that a maximum response time is calculated and that there is clearly a timer in Ellis which is used to set up an initial value [answer, pages 9-10].

We will sustain the examiner's rejection of claim 1. Although we agree with appellant that the counter in Ellis does not constitute a timer as claimed, we find that the invention as recited in claim 1 is still met by Ellis. Ellis does measure a response time between transmission of the information frame and receipt of the response thereto. This measurement of response time in Ellis is called "RESPONSETIME." The value of RESPONSETIME is compared to a maximum response time (MAXTIME) which is initially set to some initial value. If the value of RESPONSETIME is greater than the current value of MAXTIME, then the value of MAXTIME is replaced with the value of RESPONSETIME [see Figure 4 and corresponding description]. Thus, the initial response time value (MAXTIME) is selectively modified in response to the value of RESPONSETIME. Since Ellis maintains a measure of the elapsed time between sending a message and receiving a response (RESPONSETIME), we find that the structure of Ellis includes a timer because whatever is measuring RESPONSETIME in

Ellis is a timer by definition. Since the timer in Ellis is clearly in electronic form, we also find that the timer must operate in response to a clock. In other words, the artisan reading the disclosure of Ellis would have understood that the electronic timer which measures RESPONSETIME in Ellis must be based on some clock basis. Therefore, we are of the view that the disclosure in Ellis would have conveyed to the artisan that the measure of RESPONSETIME was based on a timer responsive to a clock as claimed. We also sustain the examiner's rejection of claims 5 and 6 because they are grouped with claim 1.

With respect to independent claim 7, appellant argues that Ellis does not disclose initiating operation of a timer with a first response time. As noted above, appellant argues that the counter in Ellis is not a timer. Appellant also argues that Ellis fails to disclose the step of selectively incrementing the first response time when the first query response has been received [brief, pages 3-4]. The examiner responds that Ellis teaches setting the maximum response time to some initial value which inherently uses a timer. The examiner also responds that the selective incrementation of a first response time is met by the counter incrementation in Ellis [answer, page 10]. Appellant responds that setting the maximum response time in Ellis is not

the same as initiating operation of a timer as claimed.

Appellant also responds that the counter in Ellis increments the number of successful responses and is not the same as incrementing a response time [reply brief, pages 2-3].

We will sustain the examiner's rejection of claim 7. As noted above, we find that Ellis teaches a timer for measuring the claimed first response time (RESPONSETIME) and that has an initial value (MAXTIME). As also noted above, the timer value in Ellis is selectively changed to the value of RESPONSETIME whenever the value of RESPONSETIME is greater than the current value of MAXTIME. Therefore, the timer in Ellis is selectively incremented whenever the response time exceeds the maximum time value. We are of the view that this operation fully meets the invention of claim 7. We also sustain the examiner's rejection of claims 14 and 15 because they are grouped with claim 7.

With respect to independent claim 17, appellant argues that Ellis does not disclose a timer for measuring a first time which is coupled to the interface means. As noted above, appellant argues that this counter is not a timer. Appellant also argues that Ellis does not disclose a central processing unit coupled to the timer as claimed [brief, pages 4-5]. The examiner responds that the counter in Ellis is a timer which measures the response

time and retry times based on a timing and connected to other interface devices. The examiner also responds that the CPU and timer are essential elements which are well known and inherently exist in all computer network devices [answer, pages 10-11]. Appellant responds that the counter in Ellis is not a timer as claimed. Appellant also asserts that the examiner has not pointed to any evidence that Ellis discloses an interface means coupled to a timer [reply brief, page 3].

We will sustain the examiner's rejection of claim 17. We find that Ellis discloses a timer that is selectively modified for reasons discussed above with respect to claims 1 and 7. With respect to the claimed interface, we agree with the examiner that the artisan would understand that devices on a network can only communicate with each other through interfaces that make the communications between the devices understandable. Therefore, although Ellis does not specifically disclose the presence of interfaces, we find that such interfaces are necessarily present to permit the networks devices to communicate with each other. Since every device must have an interface, we also find that the timer disclosed in Ellis is connected to this interface in the sense that the returned responses must travel through the interface to the timer. With respect to the CPU, since Ellis

discloses the response time value as forming part of a flow chart, we find that the operations performed in Figures 4 and 5 are performed by digital computer since that is how flow charts are typically understood. If a digital computer is present to perform the calculations of Figures 4 and 5, then a CPU is also present because it is a necessary element of a digital computer. Since the flow chart of Figure 4 uses the value of RESPONSETIME, then the CPU must be coupled to the timer where that value is maintained.

With respect to claims 2 and 8, appellant argues that Ellis fails to disclose incrementing an initial response time value by a timer resolution value [brief, pages 5-6]. The examiner responds that the sporadic delay time in Ellis meets the claimed invention [answer, page 11]. Appellant responds that the sporadic delay time disclosed in Ellis is not related to a timer resolution value [reply brief, pages 3-4].

We will not sustain the examiner's rejection of claims 2 and 8. The response time value in Ellis is only replaced by a new response time value when the response time value exceeds the current value of MAXTIME. This replacement value is not based on a timer resolution value as claimed. As noted above, the counter in Ellis has nothing to do with measuring a response time. We

also do not sustain the examiner's rejection of claim 4 because claim 4 depends from claim 2.

With respect to claims 3 and 16, appellant argues that Ellis fails to disclose that the initial response time value is incremented up to a maximum response time value [brief, pages 6-7]. The examiner responds that he interprets the maximum response time value as being the initial response time value in Ellis [answer, pages 11-12]. Appellant responds that Ellis only teaches setting the maximum response time to an initial value [reply brief, page 4].

We will not sustain the examiner's rejection of claim 3, but we will sustain the examiner's rejection of claim 16. Since claim 3 depends from claim 2, Ellis fails to meet the invention of claim 3 for the reasons discussed above with respect to claim 2. With respect to claim 16, however, Ellis discloses that the value of MAXTIME is incrementally increased to equal the higher values of RESPONSETIME. Each new value of MAXTIME represents the current maximum response time value. We find that the operation of Ellis meets the invention of claim 16.

With respect to claim 9, appellant argues that Ellis fails to disclose setting a transmit sequence value and comparing the transmit sequence value and a receive sequence value nor idling

the operation of the response timer [brief, page 7]. The examiner responds that the retry time or sequence value is weighted by a given formula in Ellis [answer, page 12]. Appellant responds that setting the retry time to a weighted average is not the same as setting a transmit sequence value [reply brief, pages 4-5].

We will not sustain the examiner's rejection of claim 9. We agree with appellant that there are no sequence values disclosed in Ellis. Therefore, Ellis fails to disclose the claimed setting, comparing and idling steps. Since claim 10 depends from claim 9, we also do not sustain the rejection of claim 10.

With respect to claim 11, appellant argues that Ellis fails to disclose selectively initializing a query timer with a maximum response time value [brief, page 8]. We will sustain the examiner's rejection of claim 11. As noted above, we find that Ellis teaches a timer as claimed, and the timer is initialized with a maximum response time value (MAXTIME) as claimed.

With respect to claims 12 and 13, appellant argues that Ellis fails to disclose selectively modifying the response time value to correspond to a residual time value remaining in a response timer or modifying the response time value to equal the residual time value plus a timer resolution value [brief, pages

Appeal No. 2004-2364
Application No. 09/883,710

8-9]. We will not sustain the examiner's rejection of claims 12 and 13 because there is no disclosure in Ellis of a residual time value or a timer resolution value.

With respect to claim 18, appellant argues that Ellis fails to disclose the CPU dynamically modifying the response time value in response to the first amount of time [brief, page 9]. We will sustain the examiner's rejection of claim 18. As noted above, we find that Ellis discloses a CPU connected to the timer, and the value in the timer (MAXTIME) is dynamically modified whenever the response time exceeds the current value of MAXTIME.

With respect to claim 19, appellant argues that Ellis fails to disclose a means for incrementing the response timer value by a preselected time period in response to the first amount of time [brief, pages 9-10]. We will not sustain the examiner's rejection of claim 19 because there is no preselected time period used for incrementing the timer in Ellis. As noted above, Ellis only increments the timer by replacing the current value of MAXTIME with a new value when the response time exceeds the current value of MAXTIME. This operation does not rely on a preselected time period.

In summary, we have sustained the examiner's rejection with respect to claims 1, 5-7, 11 and 14-18, but we have not sustained

Appeal No. 2004-2364
Application No. 08/883,710

the examiner's rejection with respect to claims 2-4, 8-10, 12, 13 and 19. Therefore, the decision of the examiner rejecting claims 1-19 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

Jerry Smith
JERRY SMITH

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Administrative Patent Judge

Joseph F. Rugg
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Administrative Patent Judge

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Appeal No. 2004-2364
Application No. 08/883,710

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